IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2699 of 1985

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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P B ANTANI - Petitioner(s)
Versus
UNION OF INDIA & 4 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner
MR YN RAVANI for Respondents : 1 - 2 - 3.
MS REETA CHANDARANA, AGP for Respondent(s) : 4 - 5

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 18/08/2006

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India the petitioner interalia

challenges the action of the respondents of not renewing his agency under the Public Provident Fund Scheme, 1968 (hereinafter referred to as the “Scheme”). The petitioner also challenges the action of the respondents in seeking to recover the commission amount paid to the petitioner on the deposits made in the accounts introduced by the petitioner under the Scheme.

2. The facts of the case as emerging from the record are as follows:

2.1 The petitioner is a full time career agent for the Small Savings, Life Insurance Corporation of India, Unit Trust of India as well as for the Public Provident Fund Scheme. Pursuant to an application dated 8th December, 1969 made by the petitioner, the Regional Director, National Savings, vide letter dated 19th December, 1969 informed the petitioner that he was selected as an ‘Authorised Agent’ of the Government of India in Gujarat State for canvassing for accounts and introducing subscribers under the Scheme subject to the terms and conditions stated therein, and if the said terms and conditions were acceptable to the petitioner he may return the form of acceptance of agency duly signed and witnessed.

2.2 By a letter dated 23rd December, 1969, the petitioner expressed his acceptance of the terms and conditions of the Authorised Agents (Public Provident Fund) Agency Scheme. Consequently, under a Certificate of Agency dated 26th December, 1969 the petitioner was appointed as an Authorised Agent under the Scheme to canvass for and introduce accounts under the Scheme. The said certificate was valid till 31st December, 1970.

2.3 The aforesaid certificate of Agency being valid for a period of one year, initially, the same was required to be renewed every year. However with effect from 1975, renewal was to be effected at the end of every third year. It is the case of the petitioner that in December every year, the respondent No.3-Regional Director, National Savings Organisation, used to send the prescribed forms for renewal of agency under the Scheme for being filled in and sent by the petitioner for renewal of agency. That on completion of such formality, the petitioner used to receive his certificate of agency duly renewed for the next year. The renewal was so effected from year to year and lastly renewal was effected in December 1974 for a period of three years i.e. till 31st December 1977.

2.4 It appears that subsequently on account of increase in the number of agents, the

procedure of sending prescribed forms to the agents was abandoned and agents were required to apply for renewal of agency before three weeks of the expiry of their agency. It is the case of the petitioner that as he did not receive the prescribed form for renewal of agency as was the usual practice, he prepared applications for renewal of agency on similar lines and sent the same along with that of his father Shri B.U. Antani to the respondent No.3 along with the Certificates of Authority issued in their favour. Pursuant to the said application, renewal was to be effected for a period of three years, i.e., for the period from 1st January 1978 to 31st December 1980.

2.5 It is the case of the petitioner that after forwarding the aforesaid application, the petitioner under the belief that the renewal of his agency was a matter of formality, continued to book business as an agent under the Scheme and was also paid commission on the business booked by him. However, as the Certificate of Authority, duly renewed, were not received back, the petitioner addressed a telegram dated 15th December 1980 to the respondent No.3 in the following terms:

“SURPRISED RENEWED AGENCY OF P B ANTANI NO.GUJ/BH/PPF/I B U ANTANI GUJ/BH/PPF/12 NOT RECEIVED NO OTHER AGENCY RENEWAL COMMUNICATION RECEIVED SINCE LONG FROM YOU SALE COMMISSION

ALSO NOT RECEIVED SINCE EXPEDITE SENDING UPTO DATE RENEWED LONG AGENCIES AND ALL COMMISSION ARREARS”

2.6 In reply to the aforesaid telegram, the respondent No.3, vide letter dated 17th March, 1981 informed the petitioner that they have not received any application from him for renewal of P.P.F. Agency. The petitioner was asked to let them know the full details thereof and was requested to send the Certificate of Authority for renewal along with the prescribed form enclosed therewith, through the District Savings Officer, Bhavnagar.

2.7 The petitioner, thereafter, made an application for renewal of Agency on 26th March 1981, wherein it was stated that the Certificate of Authority which was to expire in 1977, was sent for renewal but was not received so far in spite of reminders, telegram etc.; and submitted the said application to the District Savings Officer, Bhavnagar. The District Savings Officer, forwarded the same to the respondent No.3 along with a communication dated 28th March, 1981.

2.8 By a communication dated 27/29th April, 1981 addressed to the petitioner and his father,

the respondent No.3 informed them that they had not received original Certificate of Authority with their applications dated 26th March, 1981. The petitioner and his father were further informed that they had stated that they had sent their Certificates of Authority to the said office in 1977; however, his office had not received any Certificate of Authority from them.

2.9 In reply to the aforesaid communication, the petitioner vide a letter dated 20th July, 1981 addressed to the respondent No.3, stated that as he does not maintain any inward outward register, he is not in a position to state the exact number and date under which the original Certificate of Authority were sent for renewal in 1977; that the original Certificates of Authority were sent with a request to send application form as they were not received from his office before December 1977; that pursuant to disputes with the Income-tax department the petitioner had to file appeal; that on account of I.T. appeal tension, etc. he could not send reminder to his office and was through out under the impression that the agencies stand renewed after sending to his office some-where in December 1977; that only when the payment of commission was stopped from August 1978, the petitioner paid a visit to the office of the respondent No.3 when they could not meet personally.

2.10 By a communication dated 25th April, 1983, the petitioner forwarded a detailed note on the proposal for renewal of agency under the Scheme beyond 31.12.1977, with a request that on the facts emerging from the said note, arrangement may be made for early renewal of the relative certificates of Authority retrospectively from 31st December, 1977 and settlement of outstanding commission claims. It requires to be noted that in the said note it is interalia stated that though the original Certificates of Authority had not been received for quite some time, the petitioner had presumed that the same was on account of normal delays and that renewal of the authority being a periodical ritual was a foregone conclusion; that commission claims for both the agencies were admitted by the Regional Director till the end of July 1978 and it was only when the commission claims were withheld from August 1978 that the petitioner paid a personal visit to the Regional Director that it was learnt that the same was because the agency certificates had remained un-renewed, although they had not received any written communication from the said authority to that effect. That since the matter remained unattended at the Regional Director’s Office, presumably under heavy pressure of work, the petitioner sent a telegram to the said office on 15.12.1980.

2.11 It appears that there was no response to the aforesaid letter of the petitioner, hence, the petitioner addressed a letter dated 20th September, 1983 to the respondent No.3 reiterating his request for early renewal of the relative certificates of authority retrospectively from 31st December, 1977 and settlement of commission claims outstanding since August-1978.

2.12 In reply to the aforesaid letter, the respondent No.3 vide communication dated 24/26th September, 1983 informed the petitioner that the matter is pending with the National Savings Commissioner, Nagpur; that they have reminded the said authority again and on hearing from him, further communication will follow. Vide a communication dated 15/16th November 1983 the respondent No.3 sent a reminder to the respondent No.1 and endorsed a copy to the petitioner.

2.13 A year thereafter, the petitioner vide letter dated 18th September 1984, requested the respondent No.3 to remind the National Savings Commissioner once again.

2.14 In reply to the aforesaid letter the respondent No.3 vide the impugned communication dated 6/14th December, 1984,

informed the petitioner that the National Savings Commissioner, Nagpur has now informed that the case has been considered carefully and it has been decided that the petitioner's P.P.F. Agency issued Certificate of Authority No.GUJ/BH/PPF/1 dated 26.12.69 cannot be renewed with retrospective effect. As such the petitioner's Agency stands terminated with effect from 1.1.1978. It is also stated that it has further been decided by the National Savings Commissioner that no commission shall be payable to the petitioner for the period during which the agency was not valid due to failure in getting the agency renewed in time. The petitioner was also called upon to send the amount of Rs.16,800.25 paid to him by way of P.P.F. Commission from 1.1.1978 to 1.1.1980 by demand draft in favour of respondent No.3.

2.15 Again, by a communication/demand notice dated 5th February, 1985, the petitioner was called upon to repay the aforesaid amount.

2.16 Being aggrieved by the aforesaid communications/orders dated 6/14th December, 1984 and 5th February, 1985 the petitioner has challenged the same by invoking the writ jurisdiction of this Court.

3. Heard Mr. P.V. Hathi, learned Advocate for the petitioner, Mr.Y.N. Ravani, learned Additional

Standing Counsel for the Central Government for the respondents No.1 to 3 and Mrs. Reeta Chandarana, learned Assistant Government Pleader for the respondents No.4 and 5.

4. Learned Advocate, Mr. Hathi submitted that the impugned orders were not in consonance with the provisions of the Scheme and as such were illegal and arbitrary. Referring to the impugned order dated 6/14th December, 1984 it was submitted that a bare reading of the said order makes it clear that by virtue of the said order the existing agency of the petitioner has been terminated with retrospective effect. It was submitted that the renewal of agency of the petitioner as PPF Agent could not have been refused as under the terms and conditions of such agency the Government was bound to renew the agency there being implied condition that as long as the performance of the agent remains satisfactory, such renewal of agency would be a mere formality. Referring to the terms and conditions of Agency set out in the appointment order dated 19th December, 1969, with emphasis on clause (xi) thereof, it was submitted that the said terms and conditions envisage the termination of appointment before the agreed period only if the agent is found guilty of violation of the terms and conditions of his appointment. The learned Advocate for the petitioner also referred to

the Authorised Agents (Public Provident Fund) Scheme Procedure for Agency, and more particularly to the last paragraph thereof which provides that *"If the performance of an agent is not satisfactory of which the Regional Director, National Savings shall be the sole judge, the agency is liable to be terminated*" to submit that in view of the aforesaid provisions, renewal of agency can be refused on the sole ground that the performance of the applicant was unsatisfactory and on no other grounds. It was submitted that the termination of the petitioner's agency by the impugned order is on grounds extraneous to the very scheme under which the agency was granted and as such is bad in law, as being de hors the Scheme.

4.1 Drawing attention to clauses 14 and 15 of the "Authorised Agents (P.P.F.) Scheme, Terms and Conditions Of Agency For Canvassing Public Provident Fund" it was pointed out that the power to terminate the appointment of an agent was vested in the appointing authority i.e., the respondent No.3, Regional Director of National Savings. It was contended that vide the impugned communication, the In-charge Regional Director had merely informed the petitioner of the decision of the higher authority, namely the National Savings Commissioner, Nagpur. That broadly speaking there was no order of the appointing authority

terminating the petitioner's agency. It was submitted that the Regional Director, National Savings was the Appointing Authority and it was only the said authority who was empowered to terminate the agency, hence, the termination of the petitioner's agency vide the impugned order, which was a decision of the National Savings Commissioner was without authority of law. It was also submitted that there was no occasion for the respondents to terminate the agency of the petitioner; which even according to them continued till 1980. It was pointed out that though the agency had been renewed upto December, 1977 the respondents vide their action of paying commission in respect of bookings made by the petitioner subsequent thereto, had recognized the petitioner as an agent till January 1980.

4.2 Learned Advocate for the petitioner further submitted that the petitioner had duly made an application for renewal of agency in December 1977 and had sent the same by post; however, the respondents have denied receipt of the same. It was submitted that the denial of receipt of application was a bald statement, which cannot be believed considering the conduct of the respondents, in that, even while filing their counter to the petition, the respondents had not placed the telegram sent by the petitioner which was received by them on 15th December, 1980 on the record and

that it was only when they were called upon to do so in the present proceeding that the same was produced. It was contended that the respondents through out had not produced the best possible evidence.

4.3 It was next contended that the action of the respondents was required to be declared as void and ineffective as the same was barred by the law of limitation for the reason that the respondent No.3, who was the competent authority, regularly paid commission to the petitioner for the business booked by him from 1st January 1978 till January 1980, thereby creating an impression that the petitioner's agency was renewed and continued by the department. It was submitted that relying upon such representation on the part of the respondents, the petitioner had continued to work as an authorized agent. Therefore, the petitioner could not have been told four years thereafter, on 6/14th December, 1984, that his agency cannot be renewed. It was contended that the said action was taken beyond reasonable time.

4.4 Referring to the correspondence that had ensued between the parties, it was submitted that at every stage the authority had created an impression that the matter of renewal of the petitioner's agency was under consideration. However, thereafter, all of a

sudden, without giving the petitioner any opportunity of representing his case, by virtue of the impugned order the petitioner's agency was terminated with retrospective effect from 1st January 1978. Hence, the said action of the respondents was against the principles of natural justice as no opportunity was given to the petitioner before adverse decision was taken, which resulted into innumerable civil consequences.

4.5 Learned Advocate for the petitioner submitted that the Public Provident Fund Scheme, 1968 is a statutory scheme framed under the provisions of the Public Provident Fund Act, 1968. It was contended that the Scheme being a statutory scheme, the relationship between the petitioner and the respondents did not arise out of a mere contract.

4.6 It was submitted that the action of the respondents was barred by the principle of promissory estoppel, in that, the petitioner was regularly paid commission for the business booked by him from 1st January, 1978 till January, 1980 by the respondent No.3 who was the competent authority, thereby creating an impression that the petitioner's agency was renewed and continued by the department. That, relying on such impression the petitioner had continued to work as an authorized agent, hence, the respondents cannot now be permitted

to turn around and say that the petitioner was not authorized to work for the said period and seek to recover the commission paid to the petitioner.

4.7 It was submitted that the impugned order was unreasonable and unjustified inasmuch as the petitioner would have to suffer the following consequences:

(i) The petitioner cannot act as an authorized agent of the National Savings Scheme also, in view of the fact that he has ceased to be a PPF Agent.

(ii) The petitioner will not be paid commission at 1% payable to him on all PPF accounts opened through his agency from 1969 to January 1980, which commission was payable to him till those accounts subsisted under the Scheme.

(iii) The petitioner cannot now make nomination of his successor which provision is now introduced in 1987 which facility will be available to the petitioner on declaration that the impugned order is void and ineffective.

(iv) The petitioner is denied the incentive prizes given by the State Government.

4.8 In support of his contentions the learned Advocate for the petitioner placed reliance on the following decisions:

(i) The decision of this Court in the case of *Ambalal Nanalal Patel vs. State Government*, 1996 (3) GCD 48(Guj) was cited for the proposition that an order at the behest of or under the order of any superior authority is no order in the eyes of law. It was submitted that in the instant case the impugned order had been made by the respondent No.3 under the order of the superior authority, i.e., the National Savings Commissioner, hence, the same was no order in the eyes of law.

(ii) The decision of this Court in the case of *Rajkot Municipal Corporation v. Nirambhai Danabhai*, 2001 (3) GLH (UJ) 12 was cited for the proposition that where a statutory duty is to be performed by a duly appointed designated office of certain rank, such statutory duties are to be performed by such officer alone. It was contended

that in the instant case the statutory duty of termination of agency was vested in the respondent No.3, whereas the impugned order of terminating the agency was passed at the instance of the higher officer, viz. the National Savings Commissioner, hence, considering the ratio of the aforesaid decision, such exercise of powers by an officer not statutorily authorized to do so was unlawful.

(iii) The decision of the Apex Court in the case of *Bank of India v. O.P. Swarnakar*, (2003) 2 SCC 721 was cited wherein the Apex Court has in the facts of the said case held that it was not possible to accept the contention that as the writ petitions involved enforcement of contract qua contract, they were not maintainable. The Court noted that the writ petitioners had filed writ petitions, inter alia, questioning the validity of the SBI Voluntary Retirement Scheme, hence the questions raised by them could be raised in a proceeding under Article 226 of the Constitution of India.

(iv) Reliance was placed upon the decision of the Apex Court in the case of *LIC and another v. Consumer Education &*

Research Centre and others, (1995) 5 SCC 482 wherein it has been held that in the sphere of contractual relations the State, its instrumentality, public authorities whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner that is fair, just and equitable. That actions of such authorities are amenable to judicial review and the validity of such action would be tested on the anvil of Article 14. It was further held that if it shown that the exercise of power is arbitrary, unjust and unfair, it should be no answer for the State and such authorities to say that their actions are in the field of private law and they are free to prescribe any conditions and limitations in their actions as private citizens, simpliciter do in the filed of private law. Its action must be based on some rational and relevant principles.

(v) The decision in the case of *Kasinka Trading v. Union of India*, (1995)1 SCC 274 was cited wherein it has been held that the basis of the doctrine of promissory estoppel is that where any party has by his word or conduct made to the other party an unequivocal

> promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties.

4.9 The learned Advocate for the petitioner took the Court through the entire written submissions submitted by the petitioner, however, with a view to avoid prolixity only the principal contentions are noted hereinabove.

4.10 It may be pertinent to note that by way of amendment, the petitioner has also challenged the introduction of system of triplicate challans for P.P.F. deposits introduced from 1983, however, the same being a totally different cause of action, the petitioner was not permitted to challenge the same in the

present petition.

4.11 Lastly, placing reliance upon the decision of this Court in the case of *B.U. Antani* v. *Union of India* rendered on 30th August, 1996 in Special Civil Application No.2700 of 1985, wherein it was held that though the agency could not be validly renewed, the deceased petitioner had in fact actually worked for the said period and when amounts collected by him during the said period came to be accepted under the Scheme, it would be unjustifiable, if, now the heirs of the deceased petitioner are called upon to pay back the amount in question; it was submitted that in any case the respondents cannot be permitted to recover the amount paid to the petitioner towards commission for the period January 1978 to January 1980. It may be noted that the said writ petition was a cognate petition, filed by the father of the petitioner in an identical set of facts.

5. Mr. Ravani, learned Additional Standing Counsel for the respondents vehemently opposed the petition. Mr. Ravani refuted the contentions raised on behalf of the petitioner contending that the issue involved in the present case arises out of a purely contractual matter. It was submitted that neither any statutory right nor any fundamental right of the petitioner was

violated by the impugned action of the respondents. It was submitted that the issue involved in the present petition falls within the domain of contractual relationships; hence, the petition itself is not maintainable.

5.1 It was stated that the issue in question in the instant petition is squarely covered by two decisions of this Court rendered in the case of *B.U. Antani v. Union of India*, (supra) and in the case of *Vasantiben Manubhai Shah v. National Savings Commissioner*, Special Civil Application No.3365 of 1985 decided on 13.08.96. It was submitted that insofar as invocation of the principle of promissory estoppel on the part of the petitioner was concerned, the same was thoroughly misconceived, in that, there was no action on the part of the respondents putting the petitioner in a position detrimental to his original position.

5.2 It was submitted that the petitioner’s agency had come to an end due to efflux of time and that the same had not been terminated in the midst of existing tenure of agency. It was submitted that what was termed as an order of termination by the petitioner, was merely a communication intimating the petitioner that his agency stood terminated with effect from January 1978. It was contended that receipt of

premium amount after termination couldn't impliedly be said to be continuation of agency. It was submitted that as a matter of policy, consistently followed by the Government, renewal has to be effected prior to the expiry of the agency. That, in the absence of a valid existing relationship of principal and agent, the petitioner could not have continued to work as an agent after December 1977.

5.3 It was submitted that the true purport of the impugned order is that the respondents have refused to renew the petitioner's agency with retrospective effect. It was submitted that renewal/non-renewal of agency was a wholly administrative act; that the relationship of principal and agent between the petitioner and the respondents was a purely contractual transaction falling within the realm of administrate functions of the State, hence, personal hearing is not contemplated insofar as renewal/non-renewal of agency is concerned.

5.4 It was submitted that the petitioner's agency having come to an end due to efflux of time, the question as to whether the same could be renewed with retrospective effect was considered by the higher authority, viz. National Savings Commissioner. It was submitted that the Scheme does not envisage renewal of agency with retrospective effect;

hence, in pursuance of the petitioner's request for retrospective renewal, the higher authority was consulted and vide the impugned communication, the petitioner was informed accordingly.

5.5 The learned Additional Standing Counsel submitted that the petition itself was barred by delay and laches, inasmuch as the petitioner's agency was not renewed since December 1977, payment of commission was discontinued from January 1980, however, the petitioner had not challenged the same at the relevant time. It was urged that any order if passed in the favour of the petitioner would cause serious prejudice to the respondents. It was contended that the petitioner's agency arose out of purely contractual relationship, and that the Government cannot be compelled to enter into a contract of agency with the petitioner. It was submitted that the fact that the petition was moved after a delay of eight years has to be considered in the light of the fact that consequences that would flow in case the petition is allowed would result into unsettling settled matters.

5.6 It was submitted that taking an overall view of the matter, allowing the petition would open flood gates for retrospective renewal of agencies; that, the same would amount to discrimination against those persons whose

agencies stood terminated due to expiry of time. It was submitted that power under Article 226 of the Constitution of India is to be exercised to protect the petitioner from violation of fundamental or statutory rights and not for enforcement of his contractual rights.

6. In rejoinder, Mr. Hathi submitted that agency flows from the Scheme, which is a statutory scheme under the provisions of the Act. It was submitted that the relationship between the agent and the Government was not merely a contractual relationship; therefore, the same would not bar a petition under Article 226. Distinguishing the decision relied upon on behalf of the respondents, it was submitted that in Special Civil Application No.2700 of 1985, the Court while deciding the petition was mainly guided by the fact that the petitioner has expired, whereas in the present case the entire action is based on the inaction on the part of the respondents.

6.1 Referring to the communication dated 24/26th September, 1983 (Annexure-M) it was submitted that the respondent No.3-Regional Director was all along aware that the matter of renewal of PPF Agency was pending before the respondents. It was submitted that the respondents had chosen to remain silent for a period of seven years, hence, they are now estopped from

saying that their action has not resulted in detriment to the agent. It was submitted that there was no question of the agency coming to an end due to efflux of time. It was urged that the petitioner had done all that was within his control and was all the time discharging his duties as a PPF agent with due diligence and sincerity. That, the petitioner had not allowed the time to expire but had taken positive steps towards renewal of his agency. It was submitted that commission is given only when the agency is alive; hence, the respondents by their action have held out to the petitioner that his agency subsists. It was contended that the respondents have not acted fairly and justly in taking up a stand that the petitioner’s agency stood terminated due to efflux of time, when all along the respondents had given an impression that the matter of renewal of the petitioner’s Agency was very much under consideration. It was submitted that such arbitrary action on the part of the respondents deserves to be struck down by this Court.

7. As is apparent from the facts recorded above, by virtue of the Certificate of Authority dated 26th December 1969, the petitioner was appointed as an agent under the Scheme. The said certificate itself provided that the same was valid till 31st December, 1970, that is, for a period of one year. It is an admitted

position that the same was renewed on a yearly basis till 1975 after which the renewal was to be effected every three years. The petitioner's agency was lastly renewed for a period of three years from January 1975 to December 1977. However, thereafter on account of change of procedure, the respondents had discontinued the practice of sending applications for renewal of agency and it was for the petitioner to obtain the prescribed form and submit applications well in advance before the expiry of the period of his agency. It appears that the petitioner did make an application for renewal of PPF Agency and forwarded the same to the respondents by ordinary post, as was the requirement. However, it also appears that the respondents did not receive the said application. Thereafter, despite absence of any intimation regarding renewal of his agency, the petitioner continued to book business. From the note submitted by the petitioner along with communication dated 25th April, 1983 (Annexure-K) it appears that the payment of commission claims to the petitioner and his father was made till August, 1978 and that, with effect from August 1978 such payment was withheld. It appears that at the relevant time the petitioner had visited the office of the respondent No.3 to inquire into the matter. However, thereafter, till December, 1980, that is a period of three years since the non-renewal of the petitioner's agency, no steps

were taken by the petitioner. On 15th December, 1980 a telegram was sent by the petitioner to the respondent No.3 which has been set out hereinabove. Thus, it is apparent that if at all it had been held out to the petitioner that his agency is continued it can be said to be for the period up to August 1978. After the said period it is evident that the respondents had stopped admitting the claims of the petitioner for payment of commission on the business booked by him, so it cannot be said that the petitioner was not aware of the non-renewal of his agency.

7.1 As noted hereinabove, the certificate of authority itself provides that the same is valid for the period stated therein. Reference is also required to be made to the communication dated December 1974 of the respondent No.3, (Annexure-‘E’) forwarding renewal application form to the petitioner. A copy of the said communication is also endorsed to the District Savings Officer, inter-alia directing him to inform the petitioner not to book business without renewal of agency otherwise he will not be entitled to any commission in absence of valid authority. Thus, it was clear that unless the agency is renewed the petitioner was not entitled to act as an agent under the Scheme, and there was no cause for any misunderstanding to arise in respect of the

same. Even on basic principles of contract of agency, an agent can act on behalf of the principal only under a valid subsisting contract of agency. In the present case, admittedly the contract of agency was renewed only till December, 1977 hence, upon expiry of the said period, in absence of renewal, the agency would automatically come to an end. In the circumstances, the learned Counsel for the respondents is justified in contending that the agency came to and end on account of efflux of time.

7.2 It may be that an impression may have been created that the matter of renewal of agency was under consideration, however, no promise for renewal appears to have been held out. As is borne out from the record, the petitioner was put to guard as early as in August, 1978 when payments towards commission were withheld. In any case it appears that from January 1980, no commission was paid to the petitioner. In these circumstances, there was no cause or reason for the petitioner to believe that his agency was still subsisting.

7.3 Insofar as the principle of promissory estoppel is concerned, on the facts stated above, the same cannot be said to have any applicability in the present case. Considering the fact that the very Certificate of Authority limits the validity of the agency to

the period for which it is granted, as well as in view of the correspondence between the parties referred to hereinabove, there is no material to show that the respondents have held out any promise to the petitioner that its agency would be renewed. In the circumstances reliance placed upon the decision of the Apex Court in the case of *Kasinka Trading v. Union of India* (supra) is misplaced.

7.4 As regards the contention that the order of termination was passed at the behest of the higher authority, the same is required to be stated only to be rejected. As noted hereinabove, the agency of the petitioner came to an end due to efflux of time, in absence of renewal after December, 1977. In the circumstances, the say of the learned Counsel for the respondents that the impugned communication/order is merely an intimation informing the petitioner that his agency stood terminated from January, 1978 and not an order terminating the petitioner’s agency merits acceptance. In the circumstances, the contention that the said order is without authority having been passed at the instance of the higher authority must necessary fail. Moreover, no fault can be found with the conduct of the respondent No.3, in seeking to consult his superior officer in the facts of the present case, where there was a deviation

from the normal practice as the petitioner was seeking renewal of his agency with retrospective effect. In the aforesaid premises, the decisions of this Court rendered in the case of *Ambalal Nathalal Patel* (supra) as well as in the case of *Rajkot Municipal Corporation* (supra) upon which reliance has been placed upon on behalf of the petitioner do not carry the case of the petitioner any further.

7.5 However, the contention that the respondents are not entitled to recover the amount paid to the petitioner towards commission for the period beyond December 1977 merits acceptance. This Court in the case of *B.U. Antani* (supra) held that though the agency could not be validly renewed, the deceased petitioner had in fact actually worked for the said period and when amounts collected by him during the said period came to be accepted under the Scheme, it would be unjustifiable, if, now the heirs of the deceased petitioner are called upon to pay back the amount in question. It is an admitted position that the said decision has not been challenged by the respondents. Moreover, in the case of *Vasanti Manubhai Shah* (supra) the learned Counsel for the respondent had fairly conceded that the respondent will not take any action for recovery of the amount of commission already paid to the petitioner for the period during which her agency was not

renewed. The respondents, therefore, cannot be permitted to take a different stand in case of the petitioner. In the circumstances, it is held that the respondents are not justified in seeking to recover the commission paid to petitioner for the period during which his agency was not valid on account of non-renewal thereof and it shall, therefore, not be permissible to recover the same.

7.6 Upon perusal of the record and after considering the rival submissions, it is apparent that at the relevant time two petitions arising out identical cause of action had been filed, one being the present petition at the instance of the petitioner and the other being Special Civil Application No.2700 of 1985 filed by late Shri B.U. Antani, father of the petitioner. Special Civil Application No.2700 of 1985 was decided by the aforesaid judgement and order dated 30th August 1996 whereby the petition was partly allowed to the extent that it was ordered that there should not be any recovery against the petitioners who were the heirs & legal representatives of the deceased original petitioner. Upon perusal of the said decision it appears that the learned Advocate for the petitioner may be right in contending that the said decision was guided by the fact that the petitioner had expired. However, it may be pertinent to note that the present petitioner,

as an heir and legal representative of the deceased Shri B.U. Antani, had carried the matter further by way of appeal being Letters Patent Appeal No.1186 of 1985. The said appeal was dismissed by a judgement and order dated 16th January, 2002 wherein the Division Bench has held as follows:

> *"4. A perusal of the record at annexure "A" to the petition which is the impugned order dated 6/14.12.84 shows that the renewal application was pending before the authority. However, the fact remains that the contract of agency was not renewed with effect from 1.1.1978. The authority has ultimately after considering the material on record found that the contract of agency has come to an end on 1.1.1978 and therefore in the year 1983 or 1984 it can not be renewed with retrospective effect. Order was also passed by the authority directing the petitioner to refund the commission of Rs.4,206.44ps which was received by him during the period from January 1978 to December, 1979. In this regard, reference may be made to the recent judgment of the Supreme Court in the matter of Verigamto Naveen vs Govt of A.P reported in 2001(8) SCC 344 wherein the Honourable Supreme Court in a matter of renewal of licence of a mine has observed that "in a matter of contract where validity of contract has expired the court shall not exercise powers with a view to see that the contract or the lease is renewed." In the case before the Supreme Court it was a matter pertaining to a renewal of sub-lease. The High Court had by the order directed extension of*

period of sub-lease. While reversing the order of the High Court it was observed by the Supreme Court that in the matter of contracts normally the interference by the court under Article 226 of the Constitution is not called for unless it is pertaining to discharge of any statutory obligation or it falls within the sphere of public law. In the present case we find that though the PPF is governed by the statutory provision it is not obligatory on the part of the Government to appoint the agent for the purpose of collection of funds. When the agents are appointed the rights of the agents are purely governed by the terms and conditions of the agency and in the present case when the agency has ultimately come to an end on 1.1.1978 and it has not been further renewed thereafter. We do not find a case to interfere with the decision of the authority where it has only taken a view that the contract of agency is not renewed. However, as stated above, so far as the order passed for recovery is concerned the learned single judge has taken the care in his order.

5. Further, the proforma of appointment order dated 28.6.73 whereby the petitioner was appointed as the agent is shown to us and in the said order at clause (v) it has been mentioned as under:

> *"(v) The appointment is made initially upto the end of December, 1973 and thereafter it may, at the option of the appointing authority be renewed, for the subsequent year, commencing on 1st January and ending on 31st December having regard, among other things, to*

your performance."

6. In the said condition it has been ultimately mentioned that at the option of the appointing authority the renewal can be made. Therefore, it can not be said that any statutory right or even contractual right of the petitioner is breached.

7. It is well settled principle of law that in a matter of contractual nature namely continued appointment of agent or otherwise normally this court will not exercise powers under Article 226 of the Constitution by interfering with the decision of the authority unless there is breach of any statutory provisions of law. In the present case the original petitioner was appointed as an agent and the said agency has come to an end 1.1.1978 and thereafter it is neither renewed nor the petitioner was authorised to continue to work as an agent. Even otherwise also the writ petition for the relief that the petitioner should be treated as continued to be an agent of the authority was not maintainable. Further, the petitioner had continued to work as an agent even when his contract of agency was not renewed.

8. Primafacie, when the contract of agency is not continued there is no question of permitting the petitioner to work as an agent. It has not come on the record as to whether any counter appeal is preferred by the respondent authority."

7.7 As can be seen from the aforesaid decision of

the Division Bench of this Court, the subject matter of challenge was an order dated 6/14.12.84 which appears to be similar to the order/communication dated 6/14.12.84, which is subject matter of challenge in the present petition, except that the amount sought to be recovered are different. In the said case the Division Bench, after considering the terms and conditions of the appointment order, came to the conclusion that in the condition provided under clause (v) of the said order it has been ultimately mentioned that at the option of the appointing authority the renewal can be made. Therefore, it cannot be said that any statutory right or even contractual right of the petitioner is breached. The appointment order in the present case also contains a similar clause (v). Therefore, applying the aforesaid decision of the Division Bench to the facts of the present case, it is held that there is no breach of any statutory right or even contractual right of the petitioner. Moreover, the Division Bench did not find any case to interfere with the decision of the authority where it has only taken a view that the contract of agency is not renewed. The Court also took note of the fact that insofar as the order for recovery was concerned, the learned Single Judge has taken care of the same in his order. The facts of the present case, being identical, the controversy in issue stands concluded by the aforesaid decision of the Division Bench. In the

circumstances, no case for interference is made out except to the extent of recovery of amounts already paid to the petitioner.

8. For the foregoing reasons, the petition partly succeeds. The respondents are ordered not to recover the commission paid to the petitioner for the period during which his agency was not valid on account of non-renewal thereof. The rest of the prayers made in the petition are rejected. The petition is, accordingly allowed, to the aforesaid extent. Rule is made absolute accordingly. The parties shall bear their own costs.

[HARSHA DEVANI, J.]

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